

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERT JAMES SWINT,

Plaintiff,

v.

No. 21-cv-382 MV-JFR

ROBERT S. MUELLER III, *et al*,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Plaintiff Robert James Swint's *pro se* Amended Complaint (Doc. 6). Plaintiff is housed in an Oregon psychiatric hospital and is proceeding *in forma pauperis*. He filed the Amended Complaint after the Court determined that, based on the original pleading, it could not perform its screening function pursuant to 28 U.S.C. § 1915(e). The original letter filing references the National Stroke Association; a comic book convention; and an earthquake. (Doc. 1 at 1-2). It contains no indication that any Defendant lives in New Mexico, or that any events occurred in this state. *Id.*

By an Order entered May 19, 2021, the Court directed Plaintiff to cure this deficiency by clarifying which claims he intends to assert and whether jurisdiction lies in New Mexico. (Doc. 5). Plaintiff was advised that any amended complaint must comply with Rule 8(a) of the Federal Rules of Civil Procedure, which requires a short and plain statement of the grounds for relief. The Court also instructed Plaintiff to “explain what each defendant did to him . . . ; when the defendant did it; how the defendant’s action harmed him . . . ; and what specific legal right the plaintiff believes the defendant violated.” *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007). Regarding jurisdiction, Plaintiff was advised to explain how the claims are

connected to New Mexico, whether any Defendants are here, and whether any alleged wrongdoing occurred here. The Clerk's Office mailed Plaintiff a blank 42 U.S.C. § 1983 complaint, to assist with the amendment. The Court warned Plaintiff that if he files an amended complaint that violates Rule 8(a) or the above instructions, the Court will dismiss this case without further notice. (Doc. 5 at 2).


Plaintiff filed his Amended Complaint on June 8, 2021. (Doc. 6). Like the opening pleading, it does not include discernable claims. The Amended Complaint lists various names, such as Miss America, "the Champion, James Dean," J.D. Power and his Former Associates, Sandra Dee from Grease, and the Guardians of the Galaxy along with certain dates and numbers. (Doc. 1 at 1-4). The significance of the names, dates, and numbers are unclear. Under the word "Jurisdiction," Plaintiff lists 42 U.S.C. § 2000E and "Title VII – Discrimination." *Id.* at 1. The Amended Complaint seeks over \$8.8 billion in damages and a pardon from unspecified crimes. *Id.* at 4. The caption lists eight Defendants: (1) Robert Mueller III, (2) Fallout 76; (3) John W. Dean III; (4) Hurricane Sandy; (5) Johnson & Johnson; (6) Pfizer; (7) Moderna; and (8) Astra Zeneca. *Id.* at 1.

The Amended Complaint fails to comply with the Order to Cure Deficiency, for multiple reasons. The pleading does not include a plain statement of the grounds for relief, it does not allege wrongdoing or tie any Defendant to such wrongdoing, and it does not allege facts demonstrating why this Court has jurisdiction over any civil claims. The Court also lacks jurisdiction to order Plaintiff's release from the psychiatric hospital in Oregon. Plaintiff is not being held pursuant to any state or federal proceeding in New Mexico, and challenges to "present physical custody" must be asserted in "the district of confinement." *Al-Pine v. Richerson*, 763 F.

App’x 717, 720 (10th Cir. 2019) (New Mexico Federal Court lacks jurisdiction to release a petitioner confined in Texas). *See also* <https://securecourtcaseaccess.nmcourts.gov> (confirming there are no New Mexico state cases involving the Plaintiff, Robert Swint).

For these reasons, the Court will dismiss the Amended Complaint without prejudice for failure to comply with Rule 8(a) and the Order to Cure Deficiency. *See Fontana v. Pearson*, 772 F. App’x 728, 729 (10th Cir. 2019) (Rule 8 dismissals may be entered without prejudice); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n. 3 (10th Cir. 2003) (“Rule 41(b) ... has long been interpreted to permit courts to dismiss actions *sua sponte* for a plaintiff’s failure to prosecute or comply with the ... court’s orders.”). The Court also clarifies that because it did not analyze the merits of Plaintiff’s claims, this dismissal does not count as a “strike” for purposes of the *in forma pauperis* statute. *See* 28 U.S.C. § 1915(g) (an inmate accrues a strike when the complaint is dismissed as frivolous, malicious, or for failure to state a cognizable claim).

IT IS ORDERED that Plaintiff’s Amended Complaint (**Doc. 6**) is **DISMISSED without prejudice**; and the Court will enter a separate order dismissing this civil case.


HONORABLE MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE